No. 75-727

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

BETTE P. JABLON AND JACOB C. JABLON, APPELLANTS

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Pursuant to Rule 16(1)(c) of this Court's Rules, the Solicitor General, on behalf of the Secretary of Health, Education, and Welfare, moves to affirm the judgment of the district court insofar as it denies injunctive relief.

This is a cross-appeal from a judgment of a three-judge district court declaring unconstitutional provisions of Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. 402, but declining to enjoin the operation of those provisions. The Secretary of Health, Education, and Welfare has appealed from that portion of the judgment holding the statute unconstitutional (*Mathews* v. *Jablon*, No. 75-739), and the ap-

pellees therein have taken this cross-appeal from that part of the judgment denying injunctive relief.[1]

Appellant Jacob C. Jablon applied to the Social Security Administration for husband's insurance benefits pursuant to Section 202(c) of the Social Security Act. His application was denied because he failed to establish, as required by Section 202(c)(1)(C), that he had been "receiving at least one-half of his support * * * [from his wife at the time she became entitled to old-age benefits]."[2]

Mr. Jablon and his wife then jointly filed this suit for declaratory and injunctive relief in the United States District Court for the District of Maryland, alleging that the dependency provision of Section 202(c)(1)(C) was unconstitutionally discriminatory in that no similar showing of dependency is required as a condition of eligibility for wife's insurance benefits.[3] A three-judge court was convened pursuant to 28 U.S.C. 2282. The court declared the dependency provision unconstitutional and directed the Secretary to begin payment of husband's insurance

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[1]Although cross-appellants invoke 28 U.S.C. 1253, for the reasons argued by the government in *Norton* v. *Mathews,* No. 74-6212, we believe that jurisdiction over the cross-appeal cannot be founded on that provision. See *Weinberger* v. *Salfi,* 422 U.S. 749, 763, n. 8. However, since the Court has jurisdiction over the Secretary's appeal under 28 U.S.C. 1252, it also has jurisdiction over this cross-appeal under the second paragraph of that provision.

[2]The government stipulated that Mr. Jablon had exhausted his administrative remedies (J.S. App. 11a).

[3]The Jablons originally sought certification of the suit as a class action but withdrew this request following this Court's decision in *Weinberger* v. *Salfi,* 422 U.S. 749 (J.S. App. 5a, n. 4).

benefits to Mr. Jablon.[4] The court, however, on the basis of this Court's decision in *Weinberger* v. *Salfi,* 422 U.S. 749, rejected appellants' request for an injunction against enforcement of the statute, holding that Section 205(g) of the Social Security Act did not authorize district courts to enjoin the operation of the Act.

1. The question presented by appellants in this cross-appeal is whether Section 205(g) of the Social Security Act empowers the district court to enjoin the operation of the Act. That question is presently before the Court in *Norton* v. *Mathews,* No. 74-6212, argued January 13, 1976. For the reasons stated at pages 19-27 of the government's brief in that case, we believe that the district court below was not empowered to enjoin the operation of the Act.[5] We merely summarize our position in *Norton* here.

Section 205(g) confers on the district courts power only "to enter * * * a judgment affirming, modifying, or reversing the decision of the Secretary * * *." The statute confers no equity power. The reasons for this are clear. The legal remedies of reversal and modification are fully adequate to vindicate the legitimate interests of the individual claimant. In view of this fact, Congress saw no need to subject the Secretary to coercive injunctive orders in Social Security cases, and it therefore did not do

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[4]The court found it unnecessary to reach Mrs. Jablon's claim that the dependency provisions invidiously discriminated against female wage-earners by providing them with lesser insurance coverage than male wage-earners (J.S. App. 21a).

[5]A copy of our brief in *Norton* is being furnished to appellants' counsel.

In short, in this class of cases, Congress has conferred no greater power on the district courts than is necessary to enforce decrees on a case-by-case basis and has withheld general injunctive power to restrain the operation of the statute.[6] It is, moreover, clear that a judgment under Section 205(g) reversing the Secretary's decision does "not put the operation of a federal statute under the restraint of an equity decree; indeed, apart from its effect under the doctrine of *stare decisis,* it would have no other result than to require payment of appellee's benefits." *Flemming* v. *Nestor,* 363 U.S. 603, 607.

2. But even if the Court should reject our jurisdictional arguments in *Norton,* the judgment of the district court here should nevertheless be affirmed insofar as it denies injunctive relief. The relief awarded to Mr. Jablon was the reversal of the Secretary's denial of benefits. That relief constituted a fully adequate remedy at law. Under traditional equitable doctrine (4 Pomeroy, *Equity Jurisprudence* 936 (5th ed. 1941); cf. *Sunshine Coal Co.* v. *Adkins,* 310 U.S. 381), as well as recognized

[6]The cases relied on by appellants, in which the general equity jurisdiction of the district court was available to enforce a statutory scheme or review official action (see J.S. 7-8), are thus inapt. Equally beside the mark is appellants' argument (J.S. 9) that the affirmance of the district court's grant of injunctive relief in *Weinberger* v. *Wiesenfeld,* 420 U.S. 636, represents a determinative precedent on the question of the availability of injunctive relief, and the propriety of convening a three-judge court, in cases such as this. The question of the district court's jurisdiction to grant injunctive relief was not raised by the parties or discussed by the Court in that case. "[W]hen questions of jurisdiction have been passed on in prior decisions *sub silentio,* this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us." *Hagans* v. *Lavine,* 415 U.S. 528, 535, n. 5.

principles of judicial review (cf. 5 U.S.C. 703), the award of such relief rendered injunctive relief unavailable. At a minimum, the denial of injunctive relief in these circumstances was well within the equitable discretion of the district court, and appellants offer no reason why, as a matter of recognized equity jurisprudence, the district court's judgment on that point should be disturbed. Appellants argue (J.S. 12-15) only that injunctive relief is necessary to assist "others in appellants' position" (J.S. 13). It is plain, however, that the district court lacked jurisdiction to entertain the claims of, or grant relief to, those other individuals. *Weinberger* v. *Salfi,* 422 U.S. 749, 763-764. The legal remedy afforded appellants was adequate, and they were not entitled to a further, equitable remedy.

CONCLUSION

The judgment of the district court should be affirmed insofar as it denies injunctive relief.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1976.

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